

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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AMERICAN INSURANCE COMPANY
a/s/o Mariah Carey, and SINCLAIR C.S.
BEECHAM,

Plaintiff,
-against-

CORN ASSOCIATES LLC, THE FRANKLIN TOWER
CONDOMINIUM, KATZ METAL FABRICATORS, INC.,
OLYMPIC PLUMBING AND HEATING III CORP.,
and SAMCO PLUMBING, INC.,
Defendants.
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AFFIDAVIT IN SUPPORT

Docket No.: 07 CIV 8604
(WHP)(AJP)

RICHARD S. KAYE, an attorney admitted to practice before this Court, being duly sworn, deposes and says:

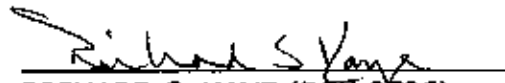
1. I am counsel for defendant, KATZ METAL FABRICATORS, INC. This affidavit, along with the attached exhibits, the affidavit of Isaac Kubersky with exhibits, and accompanying Memorandum of Law, are made in support of this defendant's motion to dismiss the plaintiff's action on the grounds that it was not commenced within the time prescribed for such actions and that it is, accordingly, time-barred.

2. This action involves a claim for property damage arising out of a water leak on April 2, 2005, at 90 Franklin Street, New York, NY, a/k/a Franklin Tower Condominium. A copy of the original Complaint, dated October 3, 2007, and filed with the Clerk of the Court on October 4, 2007, is annexed hereto as Exhibit "A". This defendant's Answer, dated December 19, 2007, is annexed hereto as Exhibit "B". The Complaint was amended twice, to add/delete parties. A copy of the Second Amended Complaint is annexed hereto as

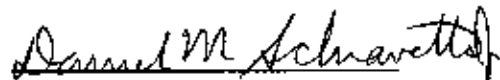
Exhibit "C". This defendant's Second Amended Answer is annexed hereto as Exhibit "D". The Second Amended Answer of defendant, THE FRANKLIN TOWER CONDOMINIUM, is annexed hereto as Exhibit "E". Also annexed is the affidavit of Mr. Isaac Kubersky, President of KATZ METAL FABRICATORS, annexed hereto as Exhibit "F", and a copy of the plumbing contract and two letters received by KATZ METAL FABRICATORS, dated August 28, 2000, and September 19, 2000, respectively, which support his affidavit.

3. For the reasons set forth in the accompanying Memorandum of Law, this defendant maintains that the action was not commenced in a timely fashion, that there was no tolling of any statute of limitations, and that the action should be dismissed.

WHEREFORE, it is respectfully requested that the Court issue an Order directing dismissal of this action against KATZ METAL FABRICATORS, INC., and for what other and further relief as to this Court may seem just and proper.


RICHARD S. KAYE (RSK-8726)

Sworn to before me this
3rd day of June, 2008.


Notary Public

DANIEL M SCHIAVETTA, JR
Notary Public, State of New York
No. 02SC5019526
Qualified in Westchester County
Commission Expires Oct. 25, 2009